

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 13 OF 2021
(Subject – Transfer)**

DISTRICT : DHULE

Ajaykumar s/o Bhaidas Chavan,)
Age : 54 years, Occu. : Govt. Service)
i.e. Police Inspector;)
R/o. Plot No. 11-B, Navnath Nagar, Near)
Gajana Maharaj Mandir, Devpur, Dhule.) **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
(Through its Secretary,)
Home Department, Mantralaya,)
Mumbai - 32.)
2. **The Special Inspector General of Police,**)
Nashik Range, Nashik.)
3. **The Superintendent of Police,**)
Dhule.)
4. **Dinesh s/o Vitthal Aher,**)
Age : Major, Occ. : Govt. Service,)
R/o : C/o : Police Station Sakri,)
Dist. Dhule.) ... **RESPONDENTS**

APPEARANCE : Ms. Anagha Pandit, Advocate holding for Shri
S.B. Talekar, Advocate for the Applicant.

: Smt. Sanjivani K. Deshmukh-Ghate,
Presenting Officer for Respondent Nos. 1 to 3.

: Shri P.N. Nagargoje, Advocate holding for Shri
D.B. Thoke Patil, Advocate for respondent No. 4.

CORAM : **SHRI V.D. DONGRE, MEMBER (J).**
DATE : **14.02.2022.**

ORDER

1. The present Original Application is filed challenging the impugned order of transfer dated 14.01.2020 (Annexure A-5) to the extent of the applicant and another transfer order dated 31.10.2020 (Annexure A-10) to the extent of respondent No. 4, both issued by the respondent No. 3 i.e. the Superintendent of Police, Dhule, thereby transferring the applicant to Police Control Room, Dhule from Sakri Police Station and transferring the respondent No. 4 to Sakri Police Station from Azadnagar Police Station.

2. The facts in brief giving rise to this Original Application are as follows:-

(i) The applicant came to be promoted to the post of Police Inspector in the year 2015 and was posted at Dhule Police Training Centre. He worked there from January 2016 to June, 2019. Thereafter, from July 2019 to September, 2019 he worked at Dhule Police Control Room.

(ii) It is further contended that one Devidas Kisan Dhumane, who was working at Sakri Police Station was transferred to Police Control Room Dhule vide order dated 05.09.2019 (Annexure A-1). The said transfer was based on the Circular dated 11.07.2019 issued by the Election Commission of India, in view of the then ensuing election of the Maharashtra State Legislative Assembly. At that time, some offences were pending against the said Devidas Kisan Dhumane.

(iii) It is further contended that thereafter, by another order dated 05.09.2019 (Annexure A-2) issued by the respondent No. 3, the applicant was transferred from Police Control Room, Dhule to Sakri Police Station. The said order was issued in view of the administrative exigencies and public interest. The applicant joined on the said post on 08.09.2019 as per the joining report Annexure A-3. Since then the applicant was working at Sakri Police Station.

(iv) It is further contended that meanwhile, the Police Inspector Devidas Kisan Dhumane challenged his transfer order dated 05.09.2019 (Annexure A-1) before this Tribunal by filing O.A. No. 983/2019. The notices were issued in the

said O.A. vide order dated 08.11.2019 (Annexure A-4). There was no order of stay.

(v) It is further contended that during pendency of the said O.A. No. 983/2019, all of a sudden, the respondent No. 3 transferred the said Devidas Kisan Dhumane, Police Inspector to Sakri Police Station from Police Control Room Dhule by the order dated 14.01.2020 (Annexure A-5). By the said order itself, the applicant came to be transferred from Sakri Police Station to Police Control Room Dhule. The said transfer order of the applicant is issued before completion of his normal tenure of two years. Therefore, the said transfer order is mid-term, as well as, mid-tenure transfer order. The applicant was constrained to give charge of Sakri Police Station to Devidas Kisan Dhumane on 14.01.2020 (Annexure A-6) and join his duties as transferred place at Police Control Room Dhule on the same day.

(vi) It is further contended that being aggrieved by the said illegal transfer order of the applicant dated 14.01.2020 (Annexure A-5), he submitted representation dated 23.01.2020 (Annexure A-7) before the respondent No. 2 i.e.

the Special Inspector General of Police, Nashik Range, Nashik, as well as, the representations dated 24.01.2020 and 19.10.2020 (Annexure A-8 collectively) to the respondent No. 3 i.e. the Superintendent of Police, Dhule, seeking cancellation of his transfer order. Meanwhile, the said Devidas Kisan Dhumane was transferred to some other place from Sakri Police Station and in his place the respondent No. 3 vide corrigendum dated 31.10.2020 (Annexure A-9) to the order dated 14.01.2020 and another order dated 31.10.2020 (Annexure A-10) transferred the respondent No. 4 from Azadnagar Police Station to Sakri Police Station, instead of retransferring the applicant from Police Control Room Dhule to Sakri Police Station.

(vii) In view of above, it is the contention of the applicant that the impugned transfer order of the applicant dated 14.01.2020 (Annexure A-5), as well as, the impugned transfer order of respondent No. 4 dated 31.10.2020 (Annexure A-9 & A-10) are issued in contravention of the provisions of Section 22N of the Maharashtra Police Act. The applicant has been illegally transferred from Sakri Police Station to Police Control Room Dhule before completion of his normal tenure of posting of two years and

the respondent No. 4 has been posted there subsequently, when the applicant was entitled for his reposting at Sakri Police Station. Hence, the present Original Application.

3. The affidavit in reply is filed on behalf of respondent Nos. 1 to 3 by one Shri Anil Waman Mane working as Sub-Divisional Police Officer, Shirpur Division, Shirpur, Dist. Dhule, thereby he has denied the adverse contentions raised in the present Original Application. It is admitted that the applicant was posted at Police Control Room Dhule since 09.06.2019. According to him, Devidas Kisan Dhumane, Police Inspector was transferred from Sakri Police Station to Police Control Room Dhule in view of the Circular issued by the Election Commission dated 11.07.2019 in the background of ensuing the Election of Maharashtra State Legislative Assembly. It is further admitted that the applicant was transferred at Sakri Police Station in place of Devidas Kisan Dhumane, but the said arrangement was made only in the background of the Circular of the Election Commission of India. It is further submitted that during tenure of the applicant at Sakri Police Station, his work was not satisfactory and there were default reports against the applicant. In view of the same, the applicant came to be transferred from Sakri Police Station to Police Control Room Dhule vide impugned order dated

14.01.2020 (Annexure A-5). In view of the same it does not suffer from any illegality. Moreover, representations made by the applicant against his transfer order dated 14.01.2020 (Annexure A-5) were pending before the Competent Authority of respondent Nos. 2 and 3 and therefore, meanwhile when Devidas Kisan Dhumane was transferred from Sakri Police Station to elsewhere, the respondent No. 4 is posted at Sakri Police Station vide order dated 31.10.2020 (Annexure A-10). The said order is issued in the background of the administrative exigencies. Therefore, the present Original Application is liable to be dismissed.

4. The respondent No. 4 filed his affidavit in reply and denied all the adverse contentions raised in the present Original Application. He submitted that the posting of the applicant at Sakri Police Station was in the background of Circular issued by the Election Commission of India, when Devidas Kisan Dhumane was transferred from Sakri Police Station to Police Control Room Dhule. Thereafter, when again Devidas Kisan Dhumane was transferred to Police Control Room Dhule to Sakri Police Station, the applicant came to be transferred by the order dated 14.01.2020 (Annexure A-5) as a consequence thereof and therefore, it cannot be said to be mid-term and mid-tenure transfer order. In fact, the applicant was transferred at Sakri

Police Station as a temporary arrangement due to ensuing Elections. It is further contented that this respondent has been legally transferred at Sakri Police Station and no interference can be caused in both the orders.

5. I have heard the arguments advanced by Ms. Anagha Pandit, learned Advocate holding for Shri S.B. Talekar, learned Advocate for the Applicant, Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for Respondent Nos. 1 to 3 and Shri P.N. Nagargoje, learned Advocate holding for Shri D.B. Thoke Patil, learned Advocate for respondent No. 4 at length.

6. Learned Advocate for the applicant submits that the impugned order of transfer of the applicant dated 14.01.2020 (Annexure A-5), as well as, impugned transfer order of the respondent No. 4 dated 31.10.2020 (Annexure A-10) are issued by the respondent No. 3 in contravention of the provisions of Section 22N(2) of the Maharashtra Police Act. In order to support her submissions, learned Advocate for the applicant placed reliance on various decisions of the coordinate bench of this Tribunal at Mumbai, which are listed as follows:-

- (i) O.A. No. 518/2020 decided on 25.08.2021 in the matter of Amol V. Bhise Vs. The State of Maharashtra and Ors.

(ii) O.A. No. 581/2020 decided on 20.08.2021 in the matter of Ganesh Ashok Jagtap Vs. The State of Maharashtra and Ors.

(iii) O.A. No. 689/2020 & Ors. decided on 06.08.2021 in the matter of Ajay Mahadev Kharade Vs. State of Maharashtra and Ors.

(iv) O.A. No. 568/2020 decided on 13.07.2021 in the matter of Sunil Vishnu Pawar Vs. The State of Maharashtra and Ors.

(v) O.A. No. 532/2020 decided on 15.02.2021 in the matter of R.S. Jadhav Vs. State of Maharashtra and Ors.

She also placed reliance on the citation of the Hon'ble Supreme Court of India reported in **(2009) 2 Supreme Court Cases 592** in the matter of **Somesh Tiwari Vs. Union of India and Ors.** decided on 16.12.2008.

7. As against that, the learned Advocate for respondent No. 4 i.e. the private respondent has placed reliance on the decision of the Hon'ble High Court of Judicature of Bombay, Bench at Aurangabad dated 04.04.2018 in **W.P. No. 6051/2017 together with 5 W.Ps.** in the matter of **Mahendra Eknath Mali Vs. The State of Maharashtra and Ors.**

8. Admittedly, the applicant is working on the post of Police Inspector. As per Section 22N (1)(c) of the Maharashtra Police Act, the normal tenure of Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector is of two years at a Police Station or Branch. The applicant at the time of passing of the impugned order of transfer dated 14.01.2020 (Annexure A-5) was working at Sakri Police Station. He was working at Sakri Police Station since 08.09.2019, as he was posted there as per the transfer order dated 05.09.2019 (Annexure A-2).

9. Record shows that as per another transfer order dated 05.09.2019 (Annexure A-1), the Police Inspector Devidas Kisan Dhumane, who was working at Sakri Police Station was transferred from Sakri Police Station to Police Control Room, Dhule. As stated earlier, by another transfer order dated 05.09.2019 (Annexure A-2), the applicant was transferred from Police Control Room Dhule to Sakri Police Station in place of Devidas Kisan Dhumane.

10. It is pertinent to note here that the transfer order dated 05.09.2019 (Annexure A-1) of Police Inspector Devidas Kisan Dhumane and 12 other officers was issued in the background of

the Election Commission's Circular dated 11.07.2019, as the Legislative Assembly Elections of the year 2019 were in the near future. However, the transfer order of the applicant dated 05.09.2019 (Annexure A-2) along with other two officers was issued as per the Section 22N(2) of the Maharashtra Police Act and not in view of ensuing Legislative Assembly Elections as per the Election Commission's Circular dated 11.07.2019. Hence, it is evident that both these orders were issued in different backgrounds and not in the identical situation of ensuing Legislative Assembly Elections. Hence, both these orders are to be taken into consideration in different perspective.

11. The applicant has challenged his impugned transfer order dated 14.01.2020 (Annexure A-5). As per the said transfer order, 9 Police officers are transferred and those are transferred as per the provisions of Section 22N (1) & (2) of the Maharashtra Police Act. As per the said transfer order, Devidas Kisan Dhumane, who was working at that time at Police Control Room, Dhule was transferred to Sakri Police Station in place of the applicant.

12. The abovesaid facts would show that, at the time of issuance of the transfer order of the applicant dated 14.01.2020 (Annexure A-5), he had worked at Sakri Police Station hardly for

about 4 months that precisely from 08.09.2019 to 14.01.2020. As stated earlier, as per the Section 22N (1)(c) of the Maharashtra Police Act, the normal tenure of the applicant, who was working on the post of Police Inspector is of two years. Hence, the impugned order of transfer of the applicant dated 14.01.2020 (Annexure A-5) is admittedly mid-term, as well as, mid-tenure transfer order. In view of the above, it is to be seen as to whether the said impugned transfer order of the applicant was issued by complying the provisions of Sub-section (2) of Section 22N of the Maharashtra Police Act, which is as follows:-

“(2) In addition to the grounds mentioned in sub-section (1), in exceptional cases, in public interest and on account of administrative exigencies, the Competent Authority shall make mid-term transfer of any Police Personnel of the Police Force.”

13. Perusal of the impugned transfer order dated 14.01.2020 (Annexure A-5) would only show that it is issued by invoking the provisions of Section 22N (1) and (2) of the Maharashtra Police Act, as per the decision taken by the competent authority of Police Establishment Board. In this regard, the respondents have placed on record a copy of minutes of meeting of the Police Establishment Board dated 14.01.2020 (Exhibit R-1, page No. 40

of paper book). Perusal of the said minutes would show that the transfer of the applicant is recommended on became of law and order, administrative need and in the public interest, as against name of the applicant, reason is mentioned as 'administrative reason'.

14. It is surprising to note here that in the affidavit in reply the respondents have come out with a case that there were default reports against the applicant, as the tenure of the applicant as Police In-charge of Sakri Police Station was not satisfactory. In this regard, the respondents have placed on record alleged default reports dated 29.10.2020 /02.11.2020 and 02.12.2020 /04.12.2020 signed by the then respondent No. 3 i.e. the Superintendent of Police, Dhule. Obviously those default reports dated 29.10.2020 /02.11.2020 and 02.12.2020 /04.12.2020 could not have been produced in the meeting of the Police Establishment Board held on 14.01.2020. In the minutes of meeting of the Police Establishment Board held on 14.01.2020, there is no whisper about any default reports against the applicant. The minutes would show that the applicant was transferred for administrative reason.

15. In the circumstances as above, in my considered opinion, the default reports against the applicant, which are of the much later date of October/ November, 2020 have no bearing on transfer order of the applicant dated 14.01.2020 (Annexure A-5).

16. No doubt, the learned Advocate for the respondent No. 4 i.e. the private respondent has placed on the decision of the Hon'ble High Court of Judicature of Bombay, Bench at Aurangabad dated 04.04.2018 in **W.P. No. 6051/2017 together with 5 W.Ps.** in the matter of **Mahendra Eknath Mali Vs. The State of Maharashtra and Ors.** In the said citation case, the impugned orders of transfer, which were issued in the background of the Election Commission Circular, were not interfered holding that those can be termed as deputation for specific period. However, in the case in hand, the transfer of the applicant from Police Control Room, Dhule to Sakri Police Station as per the order dated 05.09.2019 (Annexure A-2) and further transfer order of the applicant dated 14.01.2020 (Annexure A-5) from Sakri Police Station to Police Control Room, Dhule, were not in the background of ensuing Legislative Assembly Elections of the year 2019 or in the background of the Election Commission's Circular dated 11.07.2019. In view of the same, in my considered opinion,

the ratio laid down in the abovesaid citation case would not be applicable in the instant case.

17. On the other hand, the learned Advocate for the applicant has placed reliance on the various decisions of the Co-ordinate Bench of the M.A.T. at Mumbai, wherein the transfer orders issued in contravention of the provisions of Sub-section (2) of Section 22N of the Maharashtra Police Act are dealt with. In view of the provisions of Section 22N (2) of the Maharashtra Police Act, it was incumbent upon the respondents to show that the impugned transfer order of the applicant was issued for exceptional reason or in the public interest or on account of administrative exigencies. As observed earlier, nothing such circumstance was placed before the authority of Police Establishment Board. The minutes of the Police Establishment Board would show that only for administrative reason, the applicant was transferred from Sakri Police Station to Police Control Room Dhule. The exact nature of the administrative exigency is not demonstrated. On the contrary, in the affidavit in reply, different case altogether is sought to be made out by the respondents. Hence, the contentions raised by the respondents justifying the impugned transfer order of the applicant are self-contradictory and self-destructive. In view of the same, I am of

the opinion that the impugned transfer order of the applicant dated 14.01.2020 (Annexure A-5) is issued in contravention of the principles laid down in Sub-section (2) of Section 22N of the Maharashtra Police Act and it is not sustainable in the eyes of law. It cannot be said that the applicant was posted at Sakri Police Station only as temporary arrangement in the background of the Legislative Assembly Election of the year 2019. In the circumstances, from any angle if the impugned transfer order of the applicant is viewed, it is found that it is un-sustainable and in contravention of the provisions of Section 22N of the Maharashtra Police Act and therefore, same is liable to be quashed and set aside.

18. The applicant has also challenged the transfer order of the respondent No. 4 dated 31.10.2020 (Annexure A-10) issued by the respondent No. 3. By the said transfer order, the respondent No. 4 is transferred from Azadnagar Police Station to Sakri Police Station. In this regard, perusal of the Corrigendum order dated 31.10.2020 (Annexure A-9) would show that the respondent No. 4 was transferred at Sakri Police Station, subject to decision on the complaints made by the applicant in respect of his transfer order dated 14.01.2020. In this regard, the applicant has placed on record his various representations dated 23.01.2020

(Annexure A-7), 24.01.2020 and 19.10.2020 (Annexure A-8 collectively). I have already held that the impugned transfer order of the applicant dated 14.01.2020 (Annexure A-5) is illegal and it is liable to be quashed and set aside. In these circumstances, the impugned order of transfer of the respondent No. 4 dated 31.10.2020 (Annexure A-10) does not hold field and consequently the same is required to be quashed and set aside. I therefore, proceed to pass following order :-

ORDER

The Original Application No. 13 of 2021 is allowed in following terms :-

- (i) The impugned order of transfer dated 14.01.2020 (Annexure A-5) to the extent of applicant and impugned transfer order dated 31.10.2020 (Annexure A-10) to the extent of respondent No. 4, are hereby quashed and set aside.
- (ii) The respondents are directed to repost the applicant in the circumstances as above, at his earlier place of posting at Sakri Police Station within a period of one month from the date of this order.
- (iii) There shall be no order as to costs.

PLACE : AURANGABAD.

DATE : 14.02.2022.

KPB S.B. O.A. No. 13 of 2021 VDD Transfer

(V.D. DONGRE)

MEMBER (J)